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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/700,496
Filing Date: November 05, 2003
Appellant(s): HIRUNUMA ET AL.

MAILED
AUG 28 2006
GROUP 2800

William S. Boshnick
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 13, 2006 appealing from the Office action mailed October 18, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 2005/0018048	WU	01-2005
US 2003/0063189	HIRUNUMA	04-2003
JP 08-098209	NAGUMO	04-1996

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Wu (US 2005/0018048).

Regarding claim 1, Wu discloses a digital camera provided binoculars comprising a digital camera (2) that is able to capture an image of an object which is observed through optical systems of the binoculars (para. 0019); an a microphone (para. 0022) wherein the microphone is provided one a bottom face of the binoculars (Fig. 1). Figure 1 shows the digital camera (2), which is also the microphone on a face of the binoculars. The Wu reference does not disclose whether this is the top or bottom face. The examiner interprets the Wu reference to allow the digital camera (2) to be located on either the top or the bottom face depending on the user's preference to actuate the buttons (22 and 23) with either an index finger or a thumb.

Regarding claim 3, Wu discloses sound information collected by the microphone is recorded in association with an image captured by the digital camera (para. 0004).

Regarding claim 4, Wu discloses the recording using the microphone is carried out just after an image capturing operation of the digital camera (para. 0013, para. 0018-0023). Wu states the button (23) switches between the modes of the digital camera (2) (para. 0013). The modes are then listed (para. 0018-0023) meaning that after an image is captured the user must switch modes to record the sound, thus the sound is recorded just after the image is captured.

Regarding claim 5, Wu disclose the microphone is positioned on the bottom face and in the vicinity of a rear face where ocular lenses of the binoculars are provided (Fig. 1).

Regarding claim 6, Wu discloses the microphone is positioned on the bottom face and between a pair of optical systems of the binoculars (Fig. 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wu (US 2005/0018048) in view of Hirunuma (US 2003/0063189).

Wu teaches the invention as claimed but lacks reference to a tripod. Hirunuma teaches the use of a tripod attached to the bottom face of a digital camera provided binocular assembly (para. 0072). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have the Wu invention include the tripod as taught by Hirunuma for the purpose of capturing a clear image that is not impacted by hand vibrations.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wu (US 2005/0018048) in view of Nagumo (JP 08-098209).

Wu teaches the invention as claimed but lacks reference to the camera and microphone located on different surfaces. Nagumo teaches the camera (2a-b) and the microphone (5a-b) mounted on different surfaces of the binoculars (Fig. 1A). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the Wu reference have the microphone and camera on different surfaces as taught by Nagumo for the purpose of allowing repair to one of the two systems without requiring any contact with the second system as well as limiting the heat created by the circuitry for each system to prevent any damage to either system caused by accumulated heat.

(10) Response to Argument

On page 10 of Appeal Brief, applicant argues that it is not reasonable to assume that a user would turn the Wu device upside down to use, any more than it would be for a user to turn a digital camera or a pair of binoculars upside down and use them. The “bottom surface” of claim 1 is not provided with any point of reference, therefore the bottom face could be reasonably interpreted as any of the faces of the binocular assembly. Further, the claim language is broad to the point that if a user of the Wu reference merely picked up the Wu binoculars with the microphone on the bottom surface the current application, if allowed, would be infringed. Still further, the Wu reference shows no ergonomic bend to the binocular device (Fig. 1) which would necessitate for the sake of comfort a top surface or bottom surface of the Wu reference.

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Therefore, the Wu reference properly discloses the microphone on a bottom surface of the binocular assembly.

On page 11 of Appeal Brief, applicant argues Wu completely fails to disclose the location of the microphone in relation to the binoculars. Wu shows the microphone located in the input module (Fig. 4) by including the microphone in a box labeled input module. The input module is labeled as element 2 shown in Fig. 1. Wu states that the CCD sensor is located in element 2 (para. 0016) and the CCD sensor is shown to be in the input module (Fig. 4). Therefore, the CCD sensor and the microphone are both in the input module as shown in Fig. 4 and both the CCD sensor and the microphone are in element 2 of Fig. 1 based on para. 0016.

On page 12 of Appeal Brief, applicant argues merely turning an object upside down does not make the bottom surface the top surface. As previously stated there is no point of relation in the claim language that limits any surface of the current binocular device to a bottom surface. Additionally there is no limitation on the Wu device requiring the surface with the input module be anything other than a bottom surface. Applicant's arguments are based solely on the orientation of Fig. 1, which may or may not show the Wu binocular device from an elevated perspective or a lower view perspective.

On page 12 of Appeal Brief, applicant argues the microphone of the Wu binoculars would be on the front surface not the bottom surface regardless of whether the device was used upside down or right side up. Applicant calls the surface of lens 21 of the Wu reference the front surface. This argument is moot because there is no point of relation to limit which surface of the current binocular system is the bottom surface. Additionally, the input module which houses the microphone is located on the bottom surface of the Wu binoculars, therefore any device contained

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within the input module could be interpreted as being attached to the bottom surface of the binocular device. Finally, The claim language is drawn to where the microphone is on the binoculars, not where the microphone is on the input module.

On pages 13-15 of Appeal Brief, applicant argues the dependent claims should be allowed because the rejection of claim 1 is improper. As stated above the rejection of claim 1 is proper, therefore this argument is moot.

(11) Related Proceeding(s) Appendix


No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Joshua L Pritchett 

Conferees:

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SUPERVISORY PATENT EXAMINER


Ricky Mack

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